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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,070	12/02/2003	Michael G. Fisher	0003-033P2	2569

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EXAMINER

HOPKINS, ROBERT A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,070

Applicant(s)

FISHER ET AL.

Examiner

Robert A. Hopkins

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☒ Claim(s) 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 20 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Atkinson et al(2946626).

Atkinson et al teaches a pump comprising vacuum means for drawing a product and a fluid mixture into a chamber, separating means(8) for separating the product from the fluid, agitating means(17, 18) for agitating the product, and removal means(13) for removing the product from the chamber.

Allowable Subject Matter

Claims 1-19 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 1 and amended claim 10 recite that the agitating fluid agitates the product prior to the product entering the product discharge valve. As persuasively argued by applicant, the agitator inlet port of Atkinson is not located upstream of the product discharge valve, therefore the agitating fluid does not agitate the product prior to the product entering the product discharge valve. Claims 2-9 depend on claim 1 and hence are also allowed. Claims 11-19 depend on claim 10 and hence are also allowed.

Response to Arguments

Applicant's arguments filed 8-15-05 have been fully considered but they are not persuasive.

Applicant argues nothing in Atkinson et al can be fairly characterized as an equivalent to the means for "agitating" disclosed in Applicant's specification. Applicant further argues that according to applicant's disclosure, an agitating fluid is injected into the vacuum chamber through a port in the vacuum chamber, and in contrast Atkinson et al discloses air inlets operative to transport pulverent material that has already exited the vacuum chamber out of a discharge outlet.

Examiner notes that according to the third prong of the analysis for invoking 112 sixth paragraph, the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function. Examiner respectfully submits that the term "agitating" before "means" in claim 20 provides for sufficient structure to remove the limitation from a 112 sixth paragraph analysis. Examiner notes the case cited in the MPEP section 2181: *Cole v. Kimberly-Clark Corp.*, 102F.3d 524,531, 41 USPQ2d 1001, 1006(Fed. Cir. 1996) which stated that "perforation means for tearing" does not invoke 35 U.S.C. 112 sixth paragraph, because the claim describes the structure supporting the tearing function(i.e. perforation). Therefore, "agitating means" merely requires any agitating structure for the product, and does not require the structure and specific location with respect to other structures as argued by applicant.

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Examiner furthermore notes that removing "agitating" from "agitating means" in claim 20 would not provide for allowable claim language. Examiner respectfully submits that an equivalent for "means for agitating said product" is only an agitator inlet port and an agitating fluid associated with the agitator inlet port. Clearly Atkinson et al teaches an agitating means for agitating said product by having an agitator inlet port(17,18) and an agitating fluid associated with the agitator inlet port. The equivalent for the means plus function does not extend to the location of the agitator port with respect to the other structures of the "pump". Examiner notes that including structure, as in claim 10, which specifies the placement of the "agitator means for agitating said product" in relation to the "removal means for removing said product from said chamber" would seem to clearly overcome the structure of Atkinson et al.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

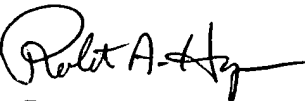
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Hopkins whose telephone number is 571-272-1159. The examiner can normally be reached on Monday-Friday, 7am-4pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rah
August 29, 2005


ROBERT A. HOPKINS
PRIMARY EXAMINER
A.U. 1724